

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAWN ARLIN DONLEY,

Plaintiff,

v.

WELLPATH, et al.,

Defendants.

No. 1:23-cv-01740-SAB (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT JUDGE
TO THIS ACTION

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF ACTION

(ECF No. 14)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Plaintiff's complaint in this action was filed on December 20, 2023. (ECF No. 1.)

On February 26, 2024, the Court screened the complaint, found that Plaintiff stated a cognizable claim for deliberate indifference against Defendants Dr. Gustavian, Medina, Debbie, Eva, Michelle, Maria, Chloe, Alejandra, Victoria, Libby, and Jane Doe. (ECF No. 10.) Plaintiff was granted the opportunity to file an amended complaint or notify the Court of his intent to proceed only on the deliberate indifference claim. (Id.) Although Plaintiff sought and received an extension of time, he failed to respond to the Court's screening order. Therefore, on April 8, 2024, the Court issued an order for Plaintiff to show cause why the action should not be dismissed. (ECF No. 14.) Plaintiff has failed to respond to the order to show cause and the time to do so has now passed. Accordingly, dismissal of the action is warranted.

I.

FAILURE TO OBEY COURT ORDER AND FAILURE TO PROSECUTE

Here, the Court screened Plaintiff's complaint, and on February 26, 2024, an order issued

1 granting him leave to file an amended complaint or notify the Court of his intent to proceed only
2 on the deliberate indifference claim. (ECF No. 10.) Plaintiff did not file an amended complaint or
3 otherwise respond to the Court's February 26, 2024 order. Therefore, on April 8, 2024, the Court
4 ordered Plaintiff to show cause within fourteen (14) days why the action should not be dismissed.
5 (ECF No. 14.) Plaintiff failed to respond to the April 8, 2024 order and the time to do so has passed.

6 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules
7 or with any order of the Court may be grounds for imposition by the Court of any and all sanctions
8 . . . within the inherent power of the Court." The Court has the inherent power to control its docket
9 and may, in the exercise of that power, impose sanctions where appropriate, including dismissal of
10 the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000).

11 A court may dismiss an action based on a party's failure to prosecute an action, failure to
12 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,
13 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
14 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended
15 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
16 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. United States
17 Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order);
18 Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
19 failure to comply with local rules).

20 "In determining whether to dismiss an action for lack of prosecution, the district court is
21 required to consider several factors: '(1) the public's interest in expeditious resolution of litigation;
22 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
23 policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.'
24 " Carey, 856 F.2d at 1440 (quoting Henderson, 779 F.2d at 1423). These factors guide a court in
25 deciding what to do, and are not conditions that must be met in order for a court to take action. In
26 re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006)
27 (citation omitted).

28 In this instance, the public's interest in expeditious resolution of the litigation and the

1 Court's need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine (PPA)
2 Products Liability Litigation, 460 F.3d at 1226. Plaintiff was ordered to either file an amended
3 complaint or notify the Court of his intent to proceed only on the cognizable claim within thirty
4 days of February 26, 2024 and has not done so. Plaintiff's failure to comply with the order of the
5 Court by filing either an amended complaint or notice hinders the Court's ability to move this action
6 towards disposition. This action can proceed no further without Plaintiff's compliance with the
7 order and his failure to comply indicates that Plaintiff does not intend to diligently litigate this
8 action.

9 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
10 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
11 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of dismissal.

12 The public policy in favor of deciding cases on their merits is greatly outweighed by the
13 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. In order
14 for this action to proceed, Plaintiff is required to file an amended complaint or notify the Court of
15 intent to proceed on the cognizable claim. Despite being ordered to do so, Plaintiff did not file an
16 amended complaint or respond to the order to show cause and this action cannot simply remain idle
17 on the Court's docket, unprosecuted. In this instance, the fourth factor does not outweigh Plaintiff's
18 failure to comply with the Court's orders.

19 Finally, a court's warning to a party that their failure to obey the court's order will result in
20 dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
21 Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424. The Court's February 26, 2024, order
22 requiring Plaintiff to file an amended complaint expressly stated: "Plaintiff is warned that, if he
23 fails to comply with this order, the Court will recommend to the District Judge that this action be
24 dismissed for failure to prosecute and failure to obey a court order." (ECF No. 10 at 14.) In
25 addition, the Court's April 8, 2024, order to show cause specifically stated: "Failure to comply with
26 this order will result in a recommendation to dismiss this action, without prejudice, for failure to
27 prosecute and failure to comply with a court order." (ECF No. 14 at 2.) Thus, Plaintiff had adequate
28 warning that dismissal would result from his noncompliance with the Court's order.

II.

ORDER AND RECOMMENDATION

The Court has screened Plaintiff's complaint and directed Plaintiff to file an amended complaint within thirty days. Plaintiff has failed to comply with the Court's order to file an amended and has not responded to the Court's order to show why the action should not be dismissed. In considering the factors to determine if this action should be dismissed, the Court finds that this action should be dismissed for Plaintiff's failure to obey the February 26, 2024 and April 8, 2024 orders and failure to prosecute this action.

Accordingly, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a District Judge to this action.

Further, it is HEREBY RECOMMENDED that this action be dismissed for Plaintiff's failure to comply with a court orders and failure to prosecute.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **May 2, 2024**


UNITED STATES MAGISTRATE JUDGE